

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 278 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

DINESHKUMAR RAVJIBHAI VAGHELA

Versus

NARNABHAI POPATBHAI KATHAIRIYA

Appearance:

MR JR NANAVATI for Petitioner
None appeared for the Respondent

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 29/06/2000

C.A.V. JUDGEMENT

Heard the learned counsel for the appellant.
This appeal is preferred from the order passed below application at Ex.5 in Special Civil Suit No.91 of 1993 pending before the learned Civil Judge (S.D.), Gondal whereby the application for interim injunction to

restrain the respondents from transferring the land admeasuring 4 acres 1 guntha being a part of Survey No.134 (134/6) situated at village Deradi (Kumbhaji), Gondal, was rejected. It is noted at the outset that the injunction sought as above has been granted by this Court by way of interim relief in this appeal and, therefore, it operates till now.

2. The relevant facts in brief are that the appellant entered into an agreement with the defendants to purchase the agricultural land. The agreement to sell the land dated 15.12.1991 stipulated that the respondents would do the needful to convert the said agricultural land into non-agricultural land and thereafter the amount of consideration was to be paid within 90 days from the date of the N.A.Order. The appellant had paid Rs.10,000 towards the earnest money and a further sum of Rs.40,000 was payable after one month. However, according to the appellant, the defendants refused to accept the further payment of Rs.40,000 and set up defences that the father of the respondents is the exclusive independent owner of the suit land and the appellant had taken thumb impressions of the parents of the respondents on blank stamp papers only for the purpose of conversion of the land. Thus, the respondents denied the fact of having ever entered into an agreement to sell the suit land or having received the earnest money. It was contended before the trial Court that even the agreement to sell itself contained the condition that it was for the appellant to arrange for the conversion of the land into non-agricultural land and that he had failed in doing so. And otherwise, for the alleged breach of the contract, the appellant could be compensated in terms of money.

3. Considering the rival contentions of the parties, the trial Court has concluded that vesting of the land with the parents of the respondents and the genuineness of the agreement to sell can be decided after recording of evidence. But it was, prima facie, found that the respondents had executed the agreement to sell. The say of the appellant that he had tendered the remaining amount of Rs.40,000 but the same was not accepted is found to be not easily believable. It is also not believed that the parents of the respondents were in possession of the suit land. However, the fact that, under a condition of the agreement, the appellant was required to obtain an order from the Revenue Department for the conversion of the land from agricultural land to non-agricultural land weighed with the trial Court and it is held that the appellant could not be said to be ready and willing to purchase the land as per the terms of the

agreement. Accordingly, interim relief was refused by the trial Court.

4. The main issue that arises for consideration in this appeal is whether the appellant had established a prima facie case and whether the interim relief ought to have been granted. The learned counsel for the appellant has argued that the appellant has established the willingness on his part to perform his part of the contract. Payment of Rs.40,000, which was required to be made within one month from the date of the agreement, was kept ready in the form of a cheque and subsequently four cheques of Rs.10,000 each were also kept ready. However, as the respondents were not cooperating and disputing the agreement itself, the cheques would not have been sent by post nor could the necessary procedure for conversion of the land be carried out. It is submitted that the conditions of the agreement to sell were being violated by the respondents and the appellant was ready and willing to perform his part of the contract. And, as the contract was for the transfer of an immovable property, a suit for specific performance was the proper remedy and the appellant could not have been compensated in terms of money. Thus, it was argued that the appellant had a strong prima facie case and the balance of convenience was also in his favour as the land in question was threatened to be transferred to other parties.

5. In support of his submissions, the learned counsel for the appellant has relied upon a Full Bench decision of this Court in SHAH JITENDRA NANALAL v. PATEL LALLUBHAI ISHVERBHAI (1985 GLH 53). It was pointed out from the said judgment that there is nothing prohibiting a decree being passed for specific performance with, of course, such alternative remedies as may be called for in a situation where that decree may become inoperative. Such decree can be made conditional on the fulfillment of appropriate condition. In the facts of that case, it was held that the decree for specific performance may be made conditional on the exemption under Section 20 (1) (a) or (b) operating. It was submitted that, similarly, in the facts of the present case, after taking evidence a decree for specific performance of the contract could be passed on the condition of the appellant obtaining the necessary order as regards conversion of the agricultural land into non-agricultural land. Reliance was also placed on the Explanation to Section 10 of the Specific Relief Act, 1963 which says that unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money.

6. It is obvious from the plain reading of the impugned order that, prima facie, the existence and genuineness of the agreement to sell the land in question is established. It is obvious that when the capacity of the defendants to sell the said land was disputed, the payment sought to be made subsequent to the payment of earnest money was not accepted by the respondents. It also follows that the respondents would not cooperate in the necessary procedure for obtaining the N.A. Order being carried out. Therefore, the learned Judge of the trial Court has erred in holding that unless and until the appellant obtained such N.A. Order, he cannot be said to be ready and willing to purchase the suit land. Thus, prima facie, the breach of the contract appears to have been wrongly attributed to the appellant. In this view of the matter, the appellant having, prima facie, established a good case in his favour and the property in dispute being in danger of being alienated, it was a fit case to grant temporary injunction to restrain the respondents from alienating the property.

7. In the result, the appeal is allowed and the respondents are restrained from transferring, assigning or creating new rights in the land bearing Survey No.134 (134/6 Part) admeasuring 4 acres 1 guntha situated at village Deradi (Kumbhaji), Gondal Taluka, Rajkot during the pendency and final disposal of the Suit. The trial Court shall hear and dispose the original Special Civil Suit No.91 of 1993 as expeditiously as possible without being influenced by the observations made for examining whether a prima facie case before leading of the evidence was established.

8. The appeal is allowed with no order as to costs.

Sd/-

(KMG Thilake)

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